

EXHIBIT B
to Declaration of Steve Loe

Rachel S. Doughty, Cal. Bar No. 255904
Jessica Taylor, Cal. Bar No. 301708
GREENFIRE LAW
P.O. Box 8055
Berkeley, CA 96707
Telephone: (510) 900-9502
Facsimile: (510) 900-9502
rdoughty@greenfirerlaw.com
jtaylor@greenfirerlaw.com

Attorneys for The Story of Stuff Project

STATE WATER RESOURCE CONTROL BOARD

In the Matter of:

VV: INV 8217

DRAFT CEASE AND DESIST
ORDER ISSUED AGAINST
BLUETRITON BRANDS, INC.

**DECLARATION OF STEVE LOE IN SUPPORT
OF DRAFT CEASE AND DESIST ORDER
AGAINST BLUETRITON BRANDS, INC. FOR
UNAUTHORIZED WATER DIVERSION AND
WATER USE**

1 I Steve Loe, declare as follows:

2 1. My testimony, herein provided, is based upon my personal knowledge and
3 professional experience.

4 2. I am a professional wildlife and fisheries biologist. I have worked on and studied
5 Strawberry Creek and its fish and wildlife since the early 1980s, first as a United States Forest
6 Service biologist, then as a volunteer with the California Department of Fish and Wildlife, and now
7 as an independent biologist. I actively and regularly monitor and study the Strawberry Creek
8 ecosystem.

9 3. I served as the President of the Southern California Chapter of the Widlife Society
10 from 1980 to 1984, the professional society for wildlife biologist. I often gave talks at Society
11 Meetings and Conferences. I remain active in this organization.

12 4. I am retired from the US Forest Service after 40 years of service, during which time I
13 held the titles of Forest Biologist and Resource Officer. I worked 30 of those 40 years at the San
14 Bernardino National Forest (SBNF). My primary responsibility was to help make sure that the
15 projects and activities conducted on the SBNF protected fish and wildlife resources for use and
16 enjoyment of current and future generations. The BlueTriton Special Use Permit for spring water
17 removal infrastructure was a project which I worked on. I had responsibility for some aspects of
18 permit administration on the BT permit at several different times in my career.¹ I worked with other
19 agencies and groups studying and striving to protect the flora and fauna of the Strawberry Creek
20 Watershed.

21 5. In my time on the SBNF I authored and worked with other agencies to implement the
22 Forest Habitat Management Guides for Southern Rubber Boa, California Spotted Owl, and
23 Speckled Dace—all species which depend upon healthy riparian habitat in the affected Strawberry

24
25 _____
26
27
28 ¹ For the sake of simplicity, I refer to BlueTriton Brands and its predecessors in interest as
either “BT” or “diverter” throughout.

1 Creek area. These documents are still used in management by the Forest Service and referred to by
2 agencies and biologists today.

3 6. I was the Fish and Wildlife expert on the Land Management Planning Team for all of
4 the Southern California Forests. I helped author the Threatened and Endangered Species, Riparian,
5 and Special Use Standards and Guidelines that direct and apply to all surface and groundwater
6 removal and special use permitting on all 4 Southern California National Forests.

7 7. I was assigned the lead in cooperation with the Department of Fish and Game, Santa
8 Ana Water Quality Control Board, and recreational homeowners association in the renewal of 800
9 Recreational Special Use Permits. Some of these cabin owners water use and water rights were as
10 old as BT's claim to spring and stream water. I worked with 20 homeowner associations and over
11 800 residents to work out their use of water that would protect the stream and provide water for
12 their continued use of their cabins. None of them was allowed to refuse to comply with streambed
13 protection regulations, provision of in-stream flows, and County health standards, despite each
14 using much less water than BT diverts. Some of the cabin owners were forced to have water hauled
15 in from off-site, some only took water in the winter to make sure they did not affect summer flows.
16 Getting the cabin owners, local, state, and federal agencies to agree on final permit approval was a
17 major task and took a thorough understanding of springs, seeps, and streams. I brought in expert
18 hydrologists and geologists where needed.

19 8. As an expert for the SBNF (first as a Forest Service employee, and then as a paid
20 consultant), I represented the Forest Service as lead biologist on the Arrowhead Tunnel Team for
21 more than a decade. This was the largest tunnel ever on any National Forest in the country. My role
22 as lead biologist meant that I took the lead for the Forest Service in planning and organizing the
23 biological studies, monitoring design and mitigation implementation, and participated in all
24 biological/hydrological/geological discussions and negotiations with the Los Angeles Metropolitan
25 Water District ("LAMWD") on the Arrowhead-Inland Feeder Tunnel Project ("Tunnel Project").

26 9. In 2003, I was awarded the National Forest Service's Jack Adams Award for
27 sustained and dedicated service on behalf of fish and wildlife resources on the National Forest
28 System lands. Each year, the person that best exemplifies the character of Jack Adams in the entire

1 Forest Service is awarded this honor. I was hired by Jack in 1970. I was extremely honored to
2 receive this award, the criteria for which are:

3 Following [Jack Adam's] death, the Washington Office and the Intermountain
4 Region decided to recognize the biologist or botanist that best reflect the unique
5 qualities of Jack Adams. Those qualities include a strong passion for proper
6 stewardship of the National Forests and fish and wildlife resources, strong
7 relationships with the States and other partners, a bias for getting the job done on
8 the ground, a concern for people, and never using one's position to bring attention
9 to yourself or for personal gain. The award was first presented in 1984 and has
10 been presented every year since. It has usually been presented to the individual
11 that exemplifies these qualities, has not gotten much recognition, and is nearing
12 the end of their career. In other words those individuals that have been
13 dependable, steady producers throughout their careers but have not received much
14 formal recognition.

15 SOS Exhibit 005.

16 10. As a professional biologist I am heavily involved in species protection and
17 restoration in southern California. I am a founding member of the Southern California Freshwater
18 Fauna Working Group. This is a group of professional fish and wildlife biologists from dozens of
19 agencies and academic institutions, as well as independent biologists that work together to protect
20 and restore native freshwater fauna (fish, frogs, snakes, toads, salamanders, turtles, etc.) in southern
21 California. Protection of Strawberry Creek and its Santa Ana speckled dace and other riparian and
22 aquatic species has been a focus of this group for many years. For over two years (2014-2016) this
23 group, as well as other groups and individuals, petitioned the Forest Service to protect Strawberry
24 Creek from excess water removal. I was selected by the group to represent it in negotiations with
25 the Forest Service, Nestle Waters North America (BT's predecessor in interest), Fish and Wildlife,
26 Water Board, and any other agencies regarding Strawberry Creek issues and getting water back in
the stream.

27 11. Presently I am working with the San Bernardino Valley Municipal Water District,
28 the California Department of Fish and Wildlife and the United States Fish and Wildlife Service as
well as other local water agencies to restore native fish and other species where they have been
extirpated. I have been involved in multiple rescue and re-introduction efforts on the Southern
California Forests. Strawberry Creek is a very important stream and has been a priority for species
restoration, but only if more natural flows can be assured.

1 12. Between 2014 and 2016, I was involved in negotiations with Nestle Waters North
2 America (BT's predecessor in interest) and the Forest Service, first with Nestle's Larry Lawrence
3 and then with Gene Zimmerman. Gene Zimmerman was my boss when we both worked at the
4 Forest Service, and he assigned me to the Tunnel Project. After he left the Forest Service,
5 Zimmerman was hired by Nestle. SOS Exhibit 262. At one point in the negotiations, I also was
6 offered a job by Nestle, which I declined. However, the offer indicates to me that Nestle must have
7 confidence in my credibility as a scientist and understanding of the Strawberry Creek situation.

8 13. It took an enormous public outcry, national press coverage, and an FBI investigation
9 to get the Forest Service to do an environmental analysis of the 28-year expired permit for an
10 easement on federal lands, allowing diversion of water to which Nestle had doubtful water rights
11 and which I and others within the Forest Service always thought amounted to the giving away of
12 public water. In the end, the Forest Service elected to maintain the status quo, which is to say the
13 continued dewatering of Strawberry Creek, awaiting the outcome of the decision of the SWRCB on
14 any water rights Nestle, and now BT, might have to water in Strawberry Creek.

15 14. I have personally walked almost all of Strawberry Creek and have visited various
16 diversion points on multiple occasions. Although I am unable for health reasons to do so today, I
17 speak regularly with others I trust, including Amanda Frye, Hugh Bialecki (President of Save Our
18 Forest Association), and agency biologists, hydrologists and geologists to report on their evaluation
19 of current conditions at the spring sites and downstream in the watershed. I also continue to monitor
20 the East Twin Creek USGS Stream Gage that includes Strawberry Creek flows. In the summer low
21 flow period, I monitor East Twin on the ground as well to see conditions related to the low flow
22 period which is critical to the aquatic and riparian life in the stream.

23 15. I am a Yucaipa, California resident, personally affected by the unauthorized removal
24 of water from Strawberry Creek. The unauthorized removal results in increased need for and cost of
25 imported water to the San Bernardino Valley as well as significantly affecting the health of the
26 environment where I live and the plants and animals that depend on surface and near surface
27 moisture.

28

SUMMARY OF PROFESSIONAL OPINION

1 16. It is my professional opinion, based upon years of observation and management of
2 the Strawberry Creek riparian ecosystem, that BT and its predecessors have removed substantially
3 all of the spring and groundwater that would otherwise flow to the West Fork of Strawberry Creek.
4 It would be a much wetter and more productive environment but for the actions of BT and its
5 predecessors in interest.

6 17. BT has accomplished the destruction of this riparian/aquatic habitat on public lands
7 both by (a) capping and grouting the natural springs to capture all the flows that fed them, and
8 (b) diverting all that spring water to a pick up point miles downstream. Additionally, they have
9 tapped the groundwater source for the springs and as a result, all of these springs are dry and have
10 no flow to the West Fork. The only time water flows in these drainages is following rain and snow
11 events. Then they only flow for a short period. Natural spring flows and base flows in the stream
12 near the diversions and downstream has been eliminated. The spring sites and the West Fork are
13 unnaturally dry from the water being exported from the springs in the pipeline.

14 18. This engineering of the water system to export this water started in 1929 and 1930
15 and has been improved over the years with additional boreholes, deeper boreholes, larger pipes etc.
16 See, e.g., SOS Exhibit 013, 014, 015 (Reports from the Hydrodynamics Group, hired by BT's
17 predecessor in interest to examine compliance with Food and Drug Administration rules regarding
18 labeling water as spring water); SOS Exhibits 040 to 058, collectively, the "Rowe Papers"
19 (discussing generally the study and then development of water in the Headwaters of Strawberry
20 Creek) This improvement of the system continued into at least the 1980s when the Forest Service
21 brought on hydrologists, geologists, and biologists to assess the potential impacts of additional
22 proposed improvements. SOS Exhibit 015 (Hydrodynamics Group says that improvement continued
23 until 1993). To protect the National Forest and avoid further damage to the stream, the Forest
24 denied the request to expand and limited any improvement of the system that would allow increased
25 water removal.

26 19. In my professional opinion nearly all of the water that BlueTriton removes from
27 Strawberry Canyon in the San Bernardino National Forest used to flow to Strawberry Creek on the
28

1 surface or in underground alluvium, eventually creating the hydrologically-connected base flows
2 which are so critical to plants and animals in the dry summer months.

3 20. In my professional opinion, if BT does have a right to any surface water, the point of
4 diversion should be downstream, at the base of the mountain to avoid dewatering Strawberry Creek
5 and adversely affecting public land and resources on the National Forest. That is also where my
6 review of historical documents indicates any water was removed prior to 1929 or 1930, not in the
7 Headwaters Springs.

8 21. My professional opinion is based upon the historical record, reports from various
9 government agencies, including from the Forest Service during my tenure there, and my own
10 personal observations as an experienced biologist with a long-term, and consistent observation the
11 area.

12 HISTORICAL EVIDENCE

13 **Rowe Papers (SOS Exhibits 40 to 58)**

14 22. My understanding of historical flows and conditions is based in part on what I call
15 collectively the “Rowe Papers” which include reports, field notes, and letters, generated by
16 respected engineer W. P. Rowe in the late 1920s, 1930s, and 1940s. I have reviewed various reports
17 and field notes prepared by, or under the direction of, Rowe pertaining to Strawberry Canyon which
18 I obtained from Amanda Frye, and which I understand she procured from the Water Resources
19 Institute at Cal State San Bernardino. True and correct copies of the documents I received from Ms.
20 Frye are SOS Exhibits 040-058.

21 23. Rowe specialized in hydrology—a title that was not used at the time. A reflection of
22 his stature: the papers of W.P. Rowe and his son, Joseph Andrew Rowe, formed the cornerstone
23 from which the Water Resource Institute’s archives were formed, and today the archive is named
24 after the younger Rowe. See, The Joseph Andrew Rowe Water Resources Archives (about),
25 available at: <https://www.csusb.edu/special-collections/collections/joseph-andrew-rowe-water-resources-archives> (last accessed December 14, 2021).

26 24. It is reflective of his renown that Rowe was hired to do, direct, and report the work to
27 determine the value of the springs in Strawberry Canyon and to testify in court regarding the same,

1 and that large sums of money were invested in this endeavor upon his recommendations. His
2 methods and efforts to measure flows are indisputable; his knowledge of the watershed detailed.
3 There were very few hydrologists/engineers at that time, so we are fortunate to have his work and
4 reports available.

5 25. Rowe made detailed measurements and took meticulous notes. I trust his
6 measurements and observations of Strawberry Creek, East Twin and Coldwater Canyon to be
7 accurate. Rowe was visiting the watershed and documenting conditions and flows during and before
8 initial development in 1929-1931 is so important to understanding the historical condition of the
9 springs and stream.

10 26. Rowe was able to document significant flows, which is likely why BT was willing to
11 invest in his services and the significant cost of infrastructure (as well as assisting in a settlement of
12 the *Del Rosa* lawsuit). Rowe measured the flow of the Creek and its headwaters in 1930-31 in
13 miners inches under 4 inches of pressure in. September and October numbers represent the
14 minimum flows in nearly every year that should be coming from the springs and at base flows in the
15 summer months. See SOS Exhibit 042, commencing p. 6. Note that the 1930-31 measurements
16 were taken following a two year dry spell, so the flows were undoubtably significantly below
17 average. Also, at that time, some of the water was already being diverted, so some of Rowe's
18 numbers may have been impacted (lower than natural flow) for that reason. They are, however, our
19 closest measure to natural conditions in a drier year.

20 27. The headwaters springs had significant surface expression. See, e.g., SOS Exhibit
21 055 p. 26 ("I have made no mention of the [illegible] of the origin of the springs and their source of
22 supply because we can assume that they have been flowing for a great many years and the water has
23 been entering Strawberry Creek"); SOS Exhibit 048 (recording flows from September 1930); SOS
24 Exhibit 051, p. 001 (Letter from Rowe stating Strawberry Creek "has its source at a group of
25 springs which issue from the side of Strawberry peak. . . . the flow from these springs being deep
26 seated should be fairly regular, especially during late summer season").

27 28. Rowe found the watershed occupied by lush riparian vegetation and recommended
28 removing it to increase the flows in the stream and springs to benefit his client—in other words,
what would have fed a *surface* ecosystem was removed at the headwaters to "save" that water for

1 Rowe's clients purposes. See SOS Exhibit 055 at p. 15 (estimating that ecosystem needs were using
2 about 5 miners inches per mile pre-diversion, and that "during the heat of the summer, a flow of 10
3 miners inches at the head of Strawberry Creek never reached the 1929 intake of the Arrowhead
4 Hotel. Id. at 16 (this intake was apparently the highest in the watershed and near Weir 3 (SOS
5 Exhibit 049))). Rowe discussed "two and perhaps three other side canyons having a perennial flow
6 at their heads, which flow is greatly diminished by the requirements of plant life along their beds."
7 SOS Exhibit 055.

8 29. Rowe's observations of continuous flow in the West Fork span some years of low
9 flow when there was below-normal precipitation for several years running. Therefore, based upon
10 my observation of Strawberry Creek's response to drought in more recent years, I would expect his
11 measurements would be lower than average flows for the dry years and several years after.
12 Although we cannot know for sure about stream conditions below the West Fork Confluence (since
13 they were not measured or reported on in any detail), there is little doubt that the extent of riparian
14 vegetation and surface and near-surface flows in the summer were significantly affected all the way
15 to the Coldwater Canyon confluence by the continued removal of spring and groundwater.

16 30. In addition to quantitative measurement, the Rowe Papers describe a more lush
17 landscape, similar to that described in other contemporaneous reports. See, e.g., SOS 051, p. 1, 2
18 (Rowe describes alders and sycamores—water-dependent species). Stands of willow and alder in
19 the drainages in and around the springs that were removed to increase flows at the springs and
20 downstream. SOS Exhibit 051.

21 31. Today, the riparian ecosystem is still absent from stretches of the Headwaters due to
22 the lack of water getting to or near the surface. There is only a very small remnant of the historical
23 riparian habitat and dependent flora and fauna left in the West Fork due to dewatering.

24 32. The surface and near-surface flows described by Rowe at the head of Strawberry
25 Creek and the riparian habitat that they supported would have provided high quality fish and
26 wildlife habitat, including many of the threatened and endangered species native to the site

27 33. Rowe's work and results of his measurements and analysis are all validated by the
28 Forest Service experts and BT consultants in the URS report that was provided to the Forest
Service. See, e.g., SOS Exhibits 16-17. Tellingly, the Rowe documents were only recently brought

1 to light. I know that the Forest Service reached its conclusions without the benefit of Rowe's
2 observations, so the fact that they describe surface flow and ecology without diversion in similar
3 ways is helpful.

Science Consensus

5 34. The Rowe Papers corroborate the conclusions in more recent scientific studies and
6 reports regarding natural flow in the Strawberry Creek Watershed.

7 35. Robert Taylor (USFS). Robert Taylor is a hydrologist for the US Forest Service. I
8 have worked with him, and I am familiar with his work. In the FS's *Surface Water Hydrology*
9 *Specialist Report for the Nestle Waters North America Water Bottling Special Use Permit Project*
10 (July 2017) ("Taylor Report"), which was prepared to analyze effects of permit re-issuance
11 describes how there was likely surface water running from each spring to the main channel. See
12 SOS Exhibit 027, at p. 32. Taylor describes how the spring drainages and mainstem stream reaches
13 that are now only intermittent, were perennial before development. Id. pp. 32-38, Taylor found the
14 stream to be impaired and at risk due to *unnaturally* low flows. Id. pp. 32-40 (Table at 39). He
15 concluded the watershed was imperiled as a result of the removal of all the spring flows and a
16 significant amount of groundwater that are responsible for base flows in the summer months. Id.

17 36. At a meeting with current Front Country District Ranger Joseph Rechstiener, that I
18 attended, Robert Taylor agreed that with the significant depth of some the wells and the faulting, it
19 is likely that some of the groundwater removed is affecting the Lake Gregory and Lake Arrowhead
20 watersheds as well.

21 37. Michelle Bearmar is a highly respected hydrogeologist who worked for the Forest
22 Service and was the lead for the Forest Service regarding groundwater/surface water hydrology on
23 the Arrowhead Tunnel Project and the Nestle Permit. See SOS Exhibit 020 (Bearmar Tunnel
24 Report) SOS Exhibit 025, 026 (Bearmar FS report). She determined that the Headwaters Springs
25 and Strawberry stream would be flowing and gave some flow predictions based on water removal,
26 historical records and on-site hydrogeology. I agree with Bearmar's conclusions.

27 38. URS was hired by BT, and their reports were some of the first to conclude that
28 removal of the spring and groundwater were having a significant adverse effect on downstream

1 summer flows. I have read it and it is referenced in the Taylor report, and I agree with the
2 conclusion.

3 39. Tunnel Project. I learned a great deal about the impacts of water diversion on
4 terrestrial ecosystems in my role of lead biologist on the Tunnel Project. The Inland Feeder is a 44-
5 mile-long, high-capacity water conveyance system that connects the California State Water Project
6 to the Colorado River Aqueduct and Diamond Valley Lake. The Arrowhead East Tunnel travels
7 across lower Strawberry Canyon/Twin Creek and required a special use permit from the San
8 Bernardino National Forest. The Forest Service required substantial redesign to make the tunnel
9 nearly waterproof to prevent groundwater inflow as part of the final project. Our intention was to
10 protect Strawberry Creek and a half dozen other creeks/streams from any tunnel impacts, and
11 specifically, the diverting of base flow from those streams and springs. Working with the
12 hydrologists and geologists on the tunnel team as well as the San Manuel Tribe, we made sure that
13 spring and stream flows as well as riparian habitat were maintained by irrigation when there were
14 significant tunnel inflows that affected spring, stream, and groundwater.

Historical Ecosystem Evidence

16 40. Even during low flow years, historically, before diversion commenced around 1930,²
17 the flows in Strawberry Creek were sufficient to support a trout fishery. See SOS Exhibit 256 (The
18 San Bernardino County Sun, Local Fishermen Awaiting Opening (Apr. 30, 1921) (available at:
19 <https://www.newspapers.com/clip/991370/the-san-bernardino-county-sun/>; accord, SOS Exhibit
20 255 (Colton Daily Courier, *Trout Season Opens Next Sunday* (Apr. 25, 1921), SOS Exhibit 261,
21 SOS Exhibit 260, See also, SOS Exhibit 081 (1915 map from the Automobile Club of Southern
22 California showing fishing streams, with Strawberry Creek and its tributaries shown as solid lines).

²⁷ See Taylor Report, SOS Exhibit 027, p. 21 (“The Arrowhead water extraction beginning in
²⁸ the late 1920s to early 1930s affected the portion of the streamflow supported by contributions from
springs located in the upper western portion of the project watershed . . . As other areas were
developed, extraction reduced contributions to surface from the area of boreholes”).

1 According to Department of Fish and Game reporting to local newspapers fingerlings and catchable
2 trout were both stocked in Strawberry Creek prior to the spring development by BT's predecessors.
3 SOS Exhibits 255-257. The riparian vegetation Rowe described and apparently removed cooled the
4 water in the stream and made it suitable for rainbow trout, considered a coldwater species. Based on
5 what we know of the stream and the species habitat requirements, the stream probably supported
6 arroyo chub, rainbow trout, Santa Ana sucker Santa Ana speckled dace, and mountain yellow-
7 legged frog.

8 41. Today in my opinion, trout and other native fish could not be sustained in Strawberry
9 Creek due to low summer flows largely created by BT export from the stream. The removal of
10 hundreds of acre feet water, from what would have been surface flows, is evidenced by a relative
11 lack of aquatic life as compared to the historical conditions reported by Rowe and in the newspaper
12 clippings. Climate change is contributing to drying at this time, but that is gradual and allows plants
13 and animals to adapt to changing conditions. Taking huge amounts of water from the headwaters
14 that significantly reduce base flows in a stream like Strawberry Creek is a death sentence to native
15 fish. Reduced summer flows result in the loss of spawning areas, pools for hiding to avoid
16 predation, reduced riparian vegetation which produces invertebrates for food, reduced shade which
17 causes water to heat up beyond limits in the hottest summer months, and the loss of side channel
18 refugia from floods. One major issue for fish is finding a place to hide out during floods which often
19 happens after fire in this area. When the extent of surface water, shade, pools, tributary habitat,
20 seeps, and springs is reduced to the bare minimum during drought or excessive removal of water
21 from the headwaters, fish and other aquatic species can be completely wiped out by flooding. This
22 is what happened in Strawberry Creek in 2003. Fish that had lived in the stream for many thousand
23 years were only eliminated within the last 90 years of the taking of the headwaters water.

24 42. It is generally agreed among wildlife professionals that Santa Ana speckled dace has
25 been extirpated from Strawberry Creek, in large part due to BlueTriton's unnatural water removal in
26 the Creek's headwaters. They existed in the stream for hundreds of thousands of years it appears
27 from scientific study of the species and mountain uplift, and were only lost in the last 100 years of
28 headwater diversion. The Department of Fish and Wildlife is unwilling to invest in restoration of

fish to Strawberry Creek, despite a professional consensus that it should be an ideal candidate for restoration, because without resolution of the dewatering, the effort would be futile.

3 43. Alders proliferate in drainages like Strawberry Creek, if there is enough flowing
4 water. To maintain this during seasons when trees are in leaf, Rowe suggested removing the native
5 vegetation, mostly alders, from along the stream bed and saving the water which they formerly
6 required for maintaining growth. The “need” to remove the vegetation, and its existence, show that
7 there was surface and near surface flow. The fact that it has not returned, shows that the
8 infrastructure installed at Rowe’s instruction in and around 1930 did what it was intended—“save”
9 the water from surface expression where it could be used to maintain a stream, creek, and riparian
10 system.

Personal Observation of Physical Condition

44. I am familiar with the landscape in Strawberry Canyon and with its response to
45 precipitation and drought. Strawberry Canyon and its Headwaters Springs pass through and over
46 varied geography as they traverse the National Forest. The stream and creek flows documented by
47 Rowe in the Upper Headwaters in 1929 and 1930 do not exist today.

45. The Upper Watershed around the Headwaters Springs has very little alluvium. As a
result, rainfall and snowmelt run off very quickly in that steep topography. The resultant rapid flow
in the Upper Headwaters Spring area did scour out stream channels still visible today.

19 46. At the 10, 11, and 12 complex, the topography is much less steep and so alluvium
20 can build and more storage potential exists from there downstream.

21 47. Since 2014, I and other concerned citizens have been carefully watching the
22 headwater springs and Strawberry Creek as much as possible. I have been closely following the
23 East Twin stream gage, maintained by USGS in lower East Twin Creek to monitor flows and stream
24 conditions. East Twin Creek carries the Strawberry flows to the settling basins in San Bernardino
25 Valley.

48. From San Bernardino Valley Water District public records, I understand that
49. BlueTriton removes up to over 500-acre feet (162 million gallons) of water each year from the
50. headwaters Springs.

1 49. It is my professional opinion that much of the water BlueTriton diverts and drains
2 from the Canyon would have been surface flow, or hydrologically connected to surface flow,
3 because of the historical evidence and current conditions of a degraded and unnaturally water-
4 deprived ecosystem in Strawberry Canyon.

5 50. In my professional opinion, the cumulative effect of BT's removal of water will
6 continue to result in loss of base flows and the ultimate complete drying of large reaches of the
7 Strawberry Creek and its headwaters, including the springs that feed it, that should be perennial.

8 51. We found on the tunnel project that loss of groundwater and spring flow at the tunnel
9 boring machine had effects on surface and subsurface water several miles away in some cases. We
10 were able to influence pool occurrence and depth for up to two miles by restoring surface flows in
11 the headwaters of Sand Canyon, just south of Strawberry Creek. I would expect the same result in
12 Strawberry Canyon if its water supply were no longer diverted.

13 52. If BT continues to functionally mine the source of the Headwaters Springs, it is my
14 opinion that the few remaining untapped springs in the West Fork of Strawberry Creek Watershed
15 will continue to lose surface expression due in large part to the excessive removal of groundwater
16 and surface water upslope.

17 53. Over the course of the life of the diversion structure and its expansion, the portions
18 of Strawberry Creek that are able to support riparian vegetation has shrunk and will continue to
19 shrink as the watershed continues to dewater, and this will adversely affect many wildlife and plant
20 species, some of which are threatened and endangered.

21 54. The condition of the National Forest, which was set aside to protect the watersheds
22 and maintain favorable conditions of flow for local communities (SOS Exhibits 250, 251, 253
23 (Notice of purpose of reservation), is severely degraded by the removal of so much critically needed
24 water. See, e.g., SOS 027 (describing the watershed on public lands as impaired). In the past this
25 area was described very differently than one would describe it today, post-diversion. For example, a
26 historical document describing the landscape around the resort:

27 Mysterious canyons penetrating deep into the heart of the ranges, radiate from the
28 hotel. Deep narrow valleys where a precipice two or three hundred feet high in
places shut out the sunlight; and opening out into delightful nooks and coves that
are veritable flower gardens. At one point towering sections of rocks hold the eye

1 of the geologist, in another ferns and flowers drape the banks with their choicest
2 tapestry charming the botanist. To all these heavily shaded gorges are places of
3 delight, flower decorated and musical with the songs of mountain brooks.

4 Overhead are the arches formed by the branches of the heavy tree growth;
5 sycamore, maple, oak, alder, pine, cedar and juniper, hiding the sun.

6 The changes of foliage mark the differences of elevation as one climbs up from
7 the sub-tropical to Alpine heights. Sparkling streams of purest water, gushing
8 from eternal -springs, tumble and leap over ledges and among the boulders; now
9 stopping to play awhile in some emerald pool sunk in the granite, then hiding in
10 the shadows of ferns and vines. These depths where one may get near to nature,
11 are quiet except for the songs of birds and of rippling brooks; just -the hidden spot
12 where one may rest and enjoy peace. Where cares fall away and are forgotten, and
13 worries cease from troubling.

14 SOS Exhibit 006 at p. 6 (description from around 1910, emphasis added).

15 55. Strawberry Creek should rightfully support an abundance of fish and other aquatic
16 species as it undoubtedly did historically. With more natural flows, Strawberry Creek would support
17 significantly improved habitat for the threatened, endangered, and sensitive species that use the
18 watershed and are dependent on surface water and near surface groundwater.

19 MISREPRESENTATION OF WATER RIGHTS TO PUBLIC AGENCIES

20 56. BT used the *Del Rosa* case to falsely convince the Forest Service in 1929 that the
21 case gave them the right to develop all of the springs in the Strawberry Creek watershed. See, e.g.,
22 SOS Exhibit 019 (USFS 2008 Timeline of events and USFS evolution of thought regarding water
23 rights in Strawberry Canyon); SOS Exhibit 124 (internal FS correspondence stating: “When I
24 visited the Forest in 2005, folks on the Forest indicated that they thought Nestle/Arrowhead has a
25 surface water right for the spring.”), SOS Exhibit 011 (Forest Service internal memorandum
26 regarding “Water Development Proposal by Arrowhead-Puritas (Nov. 20, 1985)(“This spring s
27 clearly tributary to the surface flow of Strawberry Creek. Arrowhead-Puritas has no standing as a
28 riparian or overlying owner. Therefore, the water law and procedures governing the appropriation of
surface water must be followed.”)) It was widely believed by Forest Service personnel during my
tenure that BT claimed rather shaky pre-1914 surface rights, but that a significant amount of the
water was groundwater with a hydrologic connection to the Creek and its headwaters. However, the
local Forest Service Office felt itself unable to push back. See, e.g., SOS Exhibit 018 (Forest
Service internal memorandum (2015)(“[Forest Service Manual] 2560 requires the Forest Service to

1 assume a hydraulic connection between groundwater and surface water until site-specific studies
2 show otherwise”)

3 57. Over the years, BT kept improving the tunnels and boreholes until the Forest Service
4 hired biologists, hydrologists, and geologists to comply with new laws and do a better job protecting
5 and managing the SBNF. In the 1990s, BT's predecessor asked to develop additional boreholes to
6 the east of the spring 7 complex. It was obvious to the team that reviewed the request that the
7 watershed could not stand additional water removal. SOS Exhibit 101 (Internal FS Memo May 8,
8 1985 ("Surface water is not available in the immediate vicinity of the existing wells; presumably
9 usurped by the existing collection system. It is assumed that the proposed new wells will result in
10 additional loss of surface water for wildlife.")) This concern was conveyed to BT, which was not
11 granted a permit to make the requested additional improvements. See SOS Exhibit 123.

12 58. The Forest Service has never conveyed any water right to BT. SOS Exhibits 150 to
13 165 (documents relating to Special Use Permits issued for the diversion structure but not the water).
14 I never once heard it said or implied that the Forest Service intended to give away any water to BT.

15 59. BT told FDA that they are only taking spring water.

REMEDY

17 60. Certainly water that is not even being used should not be diverted in the first place
18 from the water-starved Headwaters Streams. BT has publicly stated that it does not use all of the
19 water it diverts from the Headwaters Springs. In 2020, BT reported in promotional materials that it
20 collected 59 million gallons of water from the Headwater Springs and that 40.8 million gallons of
21 “overflow [was] returned to Strawberry Canyon Watershed.” See, e.g., SOS Exhibit 080. I do not
22 know where this water is discharged. It appears to me that this must be dumped somewhere at the
23 bottom of mountain, leaving miles of upstream streambed and headwaters dry. I suspect it is
24 discharged on the private land owned by the San Manuel Tribe near the tank where water is
25 normally loaded onto BT’s trucks.

26 61. The San Manuel have a permit from the Forest Service for a diversion structure at
27 the bottom of Coldwater Canyon. The permit expired decades ago. I believe that the San Manuel
28 infrastructure is connected to the BT diversion structure.

1
2 I declare under penalty of perjury to the laws of the State of California that the foregoing is
3 true and correct. Executed December 17, 2021, at San Bernardino, California.

4 
5

6 Steve Loe
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28